

City of Detroit




CITY COUNCIL

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TO: Honorable City Council

FROM: David D. Whitaker 
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DATE: March 20, 2006

RE: Charter Amendment Regarding Vacancies on City Council

Please find attached, per this Honorable Body's resolution, draft language which would amend the Detroit City Charter to provide for the filling of a vacancy of an unexpired term of City Council. Should the citizens of Detroit choose to adopt this language, City Council would be allowed to either order a special election to fill the vacant seat or make an appointment from the non-elected candidates of the previous general election.

Please note that the draft language is somewhat different from that called for in City Council's resolution; this was done to provide for continuity with the unaffected portions of the Charter.

Additionally, your Honorable Body may also wish to consider providing language to amend the date of the city's primary election to comport with state law. Currently, the Detroit City Charter at Sec. 3-101 provides, in part: "*A regular city primary election to nominate candidates for city offices shall be held on the Tuesday after the second (2nd) Monday of September before the general election.*" (Emphasis added).

However, effective September 22, 2005, M.C.L.A. 168.641(c) provides: "The August regular election date, which is the first Tuesday after the first Monday in August." (See attached). Therefore, City Council should consider allowing amendment of the City Charter to reflect this change in the state law governing elections.

Should you need anything further, please advise.

/ls

Attachment

PROPOSED BALLOT LANGUAGE 06-1

Shall Section 3-101 of the Charter of the City of Detroit be amended to provide:

That if a vacancy occurs on the Detroit City Council during an unexpired term, the majority of the seated members of the Detroit City Council shall have the authority to fill a vacancy, depending upon when the vacancy occurs, either by ordering a special primary election and a special general election to fill the vacancy or to make an appointment from the non-elected City Council candidates in the most recent general election.

SHALL THIS AMENDMENT BE ADOPTED?

YES_____ NO_____

A PROPOSAL TO AMEND THE HOME RULE CHARTER OF DETROIT,
MICHIGAN ARTICLE 3. -- ELECTIONS SECTION 3-101 CITY ELECTIONS -- TO
CHANGE THE PROCEDURE IF A VACANCY OCCURS IN THE OFFICE OF CITY
COUNCIL

Sec. 3-101. City elections.

A regular city general election to fill the elective offices of the city shall be held on the Tuesday after the first (1st) Monday of November of 1997 and every fourth (4th) year thereafter.

A regular city primary election to nominate candidates for city offices shall be held on the Tuesday after the second (2nd) Monday of September before the general election.

If a vacancy occurs in the office of mayor ~~or city council~~ thirty (30) days or more before the filing deadline for a general election in the city or special citywide election, the vacancy shall be filled at that election for the remainder of the unexpired term.

When a vacancy occurs in the office of mayor ~~or city council~~ less than thirty (30) days from the filing deadline for a general election in the city or special citywide election, the city council shall order a special primary election for the nomination of candidates in a special general election to fill the vacancy for the remainder of the unexpired term.

If a vacancy occurs during the term of city council more than two years before the filing deadline for a general election in which city council members will be elected, a majority of the seated city council members shall either: order a special primary election and a special general election to fill the vacancy in the city council for the remainder of the unexpired term or the city council shall appoint the 10th highest finisher among the non-elected city council candidates in the most recent general election.

Should the 10th place finisher not be available, those non-elected city council candidates who at the previous general city election received the highest number of votes and are otherwise qualified and willing to serve, shall be offered the appointment by the city council in the order of the next highest number of votes until the vacancy is filled. If it is impossible to fill the vacancy from this group of candidates, the city council shall order a special election to fill the vacancy.

If the vacancy occurs less than two years before the filing deadline for a general election or special citywide election in which city council members will be elected, a majority of the seated city council members shall either: order a special primary election and a special general election to fill the vacancy in the city council for the remainder of the unexpired term or they shall select from the top three (3) highest finishers of the non-elected city council candidates and who are otherwise qualified and willing to serve, from the most recent general election.

If it is not possible to fill the vacancy from this group of candidates, the city council shall order a special election to fill the vacancy.

A resolution ordering a special election shall be adopted at least eighty (80) days before the special primary election and at least one-hundred and twenty (120) days before the special general election. Nominating petitions shall be filed not later than the fourth (4th) Tuesday after adoption of the resolution ordering the special elections.

Vacancies occurring on or after March 1 of the year in which city elections are held shall not be filled by a special election.

The city council may, by resolution adopted not less than seventy (70) days before any election or special election, submit any proposal to the voters of the city.

MICHIGAN ELECTION LAW (EXCERPT)
Act 116 of 1954

***** 168.641 SUBSECTION (4) IS AMENDED EFFECTIVE SEPTEMBER 22, 2005: See enacting section 2 of 2005 PA 71 *****

168.641 Regular election date; special election; report; direction and supervision of election consolidation; short title of section.

Sec. 641. (1) Except as otherwise provided in this section and sections 642 and 642a, beginning January 1, 2005, an election held under this act shall be held on 1 of the following regular election dates:

- (a) The February regular election date, which is the fourth Tuesday in February.
- (b) The May regular election date, which is the first Tuesday after the first Monday in May.
- (c) The August regular election date, which is the first Tuesday after the first Monday in August.
- (d) The November regular election date, which is the first Tuesday after the first Monday in November.

(2) If an elective office is listed by name in section 643, requiring the election for that office to be held at the general election, and if candidates for the office are nominated at a primary election, the primary election shall be held on the August regular election date.

(3) Except as otherwise provided in this subsection and subsection (4), a special election shall be held on a regular election date. A special election called by the governor under section 145, 178, 632, 633, or 634 to fill a vacancy or called by the legislature to submit a proposed constitutional amendment as authorized in section 1 of article XII of the state constitution of 1963 may, but is not required to be, held on a regular election date.

(4) A school district may call a special election to submit a ballot question to borrow money, increase a millage, or establish a bond if an initiative petition is filed with the county clerk. The petition shall be signed by a number of qualified and registered electors of the district equal to not less than 10% of the electors voting in the last gubernatorial election in that district or 3,000 signatures, whichever number is lesser. Section 488 applies to a petition to call a special election for a school district under this section. In addition to the requirements set forth in section 488, the proposed date of the special election shall appear beneath the petition heading, and the petition shall clearly state the amount of the millage increase or the amount of the loan or bond sought and the purpose for the millage increase or the purpose for the loan or bond. The petition shall be filed with the county clerk by 4 p.m. of the twelfth Tuesday before the proposed date of the special election. The petition signatures shall be obtained within 60 days before the filing of the petition. Any signatures obtained more than 60 days before the filing of the petition are not valid. If the special election called by the school district is not scheduled to be held on a regular election date as provided in subsection (1), the special election shall be held on a Tuesday. A special election called by a school district under this subsection shall not be held within 30 days before or 35 days after a regular election date as provided in subsection (1). A school district may only call 1 special election pursuant to this subsection in each calendar year.

(5) The secretary of state shall make a report to the house and senate committees that consider election issues by December 1, 2006. The secretary of state shall report about the special elections held under this subsection, including, but not limited to, all of the following:

- (a) The number of times a special election has been held.
- (b) Which school districts have held special elections.
- (c) Information about the success rate of the ballot question submitted at the special elections.
- (d) Information about voter turnout, including the percentage and number of registered voters who voted in each special election.

(6) The secretary of state shall direct and supervise the consolidation of all elections held under this act.

(7) This section shall be known and may be cited as the "Hammerstrom election consolidation law".

History: 1954, Act 116, Eff. June 1, 1955;—Am. 2003, Act 298, Eff. Jan. 1, 2005;—Am. 2005, Act 71, Imd. Eff. July 14, 2005.

Compiler's note: Enacting section 4 of Act 71 of 2005 provides:

"Enacting section 4. If any portion of this amendatory act or the application of this amendatory act to any person or circumstances is found invalid by a court, the invalidity shall not affect the remaining portions or applications of this amendatory act that can be given effect without the invalid portion or application, if the remaining portions are not determined by the court to be inoperable, and to this end this amendatory act is declared to be severable."

Popular name: Election Code